UNITED NATIONS

A

General Assembly

Distr.
LIMITED

A/AC.182/L.62/Rev.1
30 January 1990

ORIGINAL: ENGLISH

SPECIAL COMMITTEE ON THE CHARTER
OF THE UNITED NATIONS AND ON
THE STRENGTHENING OF THE ROLE
OF THE ORGANIZATION
12 February-2 March 1990

FACT-FINDING ACTIVITIES BY THE UNITED NATIONS IN THE CONTEXT OF THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Working paper submitted by Czechoslovakia and the German Democratic Republic

I

1. In order to contribute to the further strengthening of the role of the United Nations in the maintenance of international peace and security, in particular in the prevention and peaceful settlement of disputes or situations which may threaten international peace and security, the fact-finding capabilities of the Organization should be fully used and further developed.

2. United Nations fact-finding activities should be carried out with the objective of providing full knowledge of all relevant facts needed by the competent United Nations organs, thus enabling them to exercise effectively their functions in the prevention and peaceful settlement of disputes or situations. They should be based on a comprehensive exploration and on an objective and impartial evaluation of all available information.

3. Fact-finding activities may be undertaken, within the scope of their competences:

(a) By the Security Council in respect of matters related to Chapter VII of the Charter of the United Nations, or by the Secretary-General upon the request of the Security Council acting under Chapter VII of the Charter;

(b) By the Security Council, the General Assembly or by the Secretary-General on his own behalf or upon the request of the Security Council or the General Assembly, in respect of matters concerning the maintenance of international peace and security other than those related to Chapter VII of the Charter.

best copy available

4. In considering the possibility to undertake fact-finding activities, the General Assembly as well as the Secretary-General will assure themselves that the Security Council is not exercising, in respect of the same dispute or situation, the functions assigned to it in the Charter, including the fact-finding activities.

5. In undertaking fact-finding activities, in particular the following possibilities should be considered:

(a) The sending of the Secretary-General or the assignment of another special representative;

(b) The sending of a fact-finding mission of qualified experts to the area concerned;

(c) The appointment of an ad hoc subsidiary body of the Security Council or the General Assembly for carrying out fact-finding activities primarily at Headquarters of the United Nations.

6. Without prejudice to the relevant international obligations of States, in particular to those deriving from Article 25 of the Charter, the sending of a special representative or fact-finding mission to the territory of any State requires the prior consent of such State. Any request for the consent of a State to receive such a representative or fact-finding mission within its territory should be given timely consideration.

7. The decision to use fact-finding capabilities including the sending of a special representative or fact-finding mission should indicate his or its mandate, as well as the character of the report to be presented to the sending organ upon completion of the mission.

8. States should co-operate with and give all necessary assistance to the special representative or fact-finding mission. They shall not impede the full and independent performance of the fact-finding activities or interfere with the work of the representative or mission.

8. bis States shall guarantee to the special representative or fact-finding mission, in particular:

(a) Free movement in their territory and access to the places and information needed for the full implementation of the given mandate;

(b) The right to work in full confidentiality;

(c) The enjoyment of the privileges and immunities enshrined in the Convention on the Privileges and Immunities of the United Nations.

9. The special representative as well as members of the fact-finding mission shall act in strict conformity with their mandate and, without prejudice to their privileges and immunities, shall respect the laws and regulations of the State in the territory of which they exercise their functions. They also shall not interfere with the internal matters of receiving States.

9. bis All persons taking part in the performance of the fact-finding activities shall fulfil their task impartially and shall not receive any instruction from any authority other than the appointing organ.

10. States directly concerned by the report presented as a result of the fact-finding by the special representative or by the fact-finding mission should be given an opportunity, whenever appropriate, to let the appointing organ know about their position in respect of the facts reflected in the report.

11. Whenever fact-finding includes hearings or other similar procedures, the commission or other respective body shall adopt the rules of procedure and shall arrange all the formalities required for dealing with the evidence. The rules of procedure should include, in particular, the following principles:

(a) On the inquiry both sides have the right to be heard;

(b) The commission is entitled to ask from either party for such explanations and information as it considers necessary;

(c) The witnesses and experts are summoned on the request of the parties or by the commission of its own motion;

(d) The examination of witnesses is conducted by the President;

(e) A minute of the evidence of the witness is drawn up forthwith and signed by the witness;

(f) The report of the commission is limited to a statement of facts, and has in no way the character of an award. It is signed by all members of the commission.

II

12. The Security Council should consider the possibility to undertake fact-finding activities, inter alia, to obtain objective knowledge of the facts needed for:

(a) The consideration of recommendations or decisions concerning the prevention or solution of disputes and situations which may threaten international peace and security;

(b) The determination, in accordance with Article 34 of the Charter, whether the continuation of a dispute or situation is likely to endanger the maintenance of international peace and security;

(c) The determination, in accordance with Article 39 of the Charter, of the existence of any threat to the peace, breach of the peace or act of aggression;

(d) The consideration of alleged non-compliance with conditions set up in its decisions mentioned in subparagraph (a).

13. [Deleted]

14. The Security Council should, wherever appropriate and without prejudice to Article 36 of the Charter, consider the possibility to provide in its resolutions relevant to the maintenance of international peace and security for fact-finding as a means of facilitating the solution of disputes or situations, as well as the exercise of its specific functions in the field of the maintenance of international peace and security.

15. The General Assembly should consider the possibility to undertake fact-finding activities, in particular, to obtain objective knowledge of the facts needed for the consideration of recommendations concerning the prevention or solution of disputes and situations which may threaten international peace and security, in accordance with Articles 11 and 14 and subject to Article 12 of the Charter.

15. bis The General Assembly should, wherever appropriate, consider the possibility to provide in its resolutions relevant to the maintenance of international peace and security for fact-finding as a means of facilitating the solution of disputes or situations brought to its attention.

16. The Secretary-General should, wherever appropriate, consider the possibility to undertake fact-finding activities in order to obtain objective knowledge of the facts needed for implementation of his functions provided for in Article 99 of the Charter.

16. bis The Secretary-General should respond promptly to any request by the Security Council or the General Assembly to carry out fact-finding activities either himself or through a special representative or a fact-finding mission.

16. ter The Secretary-General should pay special attention to the promotion of the use of the United Nations fact-finding capabilities at as early a stage as possible, in order to contribute to the prevention of disputes and situations likely to endanger the maintenance of international peace and security. Any proposal of the Secretary-General in this respect, if submitted to the Security Council or to the General Assembly, should be given timely consideration.

17. The Secretary-General, if requested by the States parties to a dispute, should consider the sending of a special representative or of a fact-finding mission to the area concerned.

17. bis The Secretary-General should also consider, from his own initiative or at the request of any State party to a treaty on the settlement of a dispute or situation likely to endanger international peace and security, the sending of a special representative or of a fact-finding mission for the purpose of investigation of any alleged violation of the provisions of such a treaty, if so stipulated in it.

18. The Secretary-General should maintain and develop technical capabilities of the United Nations including all necessary arrangements for the event of an emergency fact-finding mission. To that end he should prepare and update a list of experts in various fields available to take part in fact-finding activities.

READEX FICHE

19. Without prejudice to their right to resort to peaceful means of settlement of disputes of their own choice, States should be encouraged to include the provisions on the use of the United Nations fact-finding capabilities in their respective agreements, whenever such a procedure might contribute to the prevention or settlement of disputes or situations which may threaten international peace and security.

III

20. The sending of a United Nations fact-finding mission shall be without prejudice to the use by the States concerned of inquiry or other similar procedure resulting from the treaty on settlement of disputes concluded between the above-mentioned States.

21. Nothing in the present draft shall be construed as prejudicing in any manner the provisions of the Charter, including those contained in Article 2, paragraph 7, thereof, or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter.